THE FINANCIAL SERVICES ROUNDTABLE

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October 12, 2007

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket R-1286 – Truth in Lending Proposed Rule (Regulation Z)

Dear Ms. Johnson:

The Financial Services Roundtable ("Roundtable") represents 100 of the largest financial services companies providing banking, insurance, and investment products and services to the American consumer. The Roundtable member companies provide the fuel for America's economic engine, accounting directly for $18.3 trillion in managed assets, $678 billion in revenue, and 2.1 million jobs. We offer the following comments on the Federal Reserve Board's ("Board") proposed revisions to Regulation Z.

As an initial matter, we note that the consumer lending industry supports appropriate and meaningful disclosures. Better informed consumers can make better borrowing decisions, to the benefit of the economy and consumers. However, we urge the Board to weigh the potential financial costs to lenders and consumers when considering untested or ineffective disclosure requirements that may not benefit consumers.

Definition of Open-End Credit (226.2(a))

Some lenders offer products that may permit borrowers to place some advances into a sub-account and schedule repayment on that part of the line on an amortizing basis. The proposed Commentary would seem to say that the sub-account must replenish, rather than the overall line replenishing, in order to be classified as open-end. This would represent an unwarranted change in the definition of open-end credit and this portion of the Commentary should not be adopted. The proposal to treat advances that require a prior credit check as a closed-end rather than an open-end account has significant safety and soundness implications for depository institutions with credit card operations. The continued improvement in automated credit card underwriting now permits issuers to immediately complete an extensive review of a consumer's credit information before each additional advance. Currently, if a customer's requested advance exceeds the previously established credit limit, that review often allows the credit limit to be increased to allow the advance to be made. If circumstances have changed that undermine a customer's creditworthiness, a review may result in the advance being denied, even if it was within a previously established credit limit. This proposed change would effectively prohibit

these reviews and limit financial institutions to only confirm that creditworthiness has not changed before each advance, discouraging lenders from a more thorough review.

Finally, the proposed rule creates confusion over the definition of a sub-account in determining whether an account is an open-end credit account by requiring that each sub-account must replenish, or it is not to be treated as open-end credit. For example, tracking convenience checks with special promotional rates could conceivably result in the creation of a "sub-account" under the proposed rule. Such an outcome would be extremely disruptive and we would encourage the Board to review the proposal.

Fourteen Day Rule (226.5(b))

The 14 day rule for customer grace periods is adequate and should not be modified.

Periodic Rates (226.7(b))

The Roundtable supports eliminating the requirement to disclose periodic rates on periodic statements for open-end plans.

Change in Terms/Email Disclosures (226.9(c))

Some credit agreements and credit applications contain a clause stipulating that a customer providing an e-mail address is deemed to consent to receive all future notices and disclosures electronically. Consistent with the E-Sign Legislation, the Roundtable proposes that such clauses should be fully enforceable. The clause should be prominently disclosed such that a reasonable consumer would be on notice that the lender will provide written materials if the consumer so chooses.

Increase in Rates Due to Delinquency or Default or Penalty Pricing (226.9(g); 226.9(c))

The 45-day advance notice requirement in cases of delinquency or default, could cause issuers to reduce penalty triggers, increase overall rates, and/or lower approved credit limits to effectively price for the outstanding risk. The purpose of providing notice to customers of an impending interest rate increase is to permit the customer to make financial decisions to avoid the impact of an interest rate increase. Therefore, we strongly urge that the 45-day notice rule not be adopted because the unintended result could be to incent business practices that would remove flexibility that currently benefits consumers.

If the Board does seek to finalize the 45-day rule, it should be clarified that lenders who use double-default repricing (two defaults in a specified period are necessary to trigger repricing, not just one) should not be required to give the 45-day notice on the occasion of the second default. Double-default repricing is more consumer-friendly than single-default for multiple reasons. The customer, having been warned upon first default, can be careful to avoid the second default and avoid the repricing altogether. With single-default, even with the 45-day notice, the customer's only remedy to avoid the repricing is to find another card to which he can transfer the balance. Thus, to incent issuers to use double-default pricing, the Board should allow them to

avoid the 45-day notice on second default. If the Board does not allow this, issuers may move away from double-default pricing, since the combination of double-default and the 45-day notice may result in an unacceptably long period before a risky customer can be repriced.

At a minimum, the 45-day advance notice of a rate increase should not be required when the credit agreement specifies that a lower finance charge rate for any transactions will be increased to the general account finance charge rate upon default. In this situation, the customer is merely forfeiting a lower special promotions rate and is not being assessed a rate in excess of the general account finance charge rate. Therefore, the general account finance charge rate assessed after default is not a "penalty rate" that this new disclosure requirement is designed to address.

The Board should also make clear penalty or fee increases that will apply only to new charges - not to existing balances – do not require a 45-day notice.

Finally, any change to notice requirements for rate increases should include the reason for the repricing. By not requiring this, the proposal misses an important opportunity to educate consumers.

Format of Electronic Disclosures

For electronic disclosures, the type size, tabular and other formatting requirements refer to the way the creditor structures the disclosures and how the disclosure will be received on typical home equipment used under ordinary circumstances and at standard screen resolutions. It is easily possible for users to configure their machines to distort materials that are accessed and a bank would have no control over that user conduct. Similarly, no matter how the disclosure is formatted by the lender, disclosures accessed on a handheld device such as a PDA or cell phone may be distorted with regard to text continuity, size, color, items displayed on the same screen and other factors.

Use of a hyperlink for disclosures in close proximity to an application on a website should be authorized, without requiring that the link be structured in such a manner that it cannot be bypassed. In fact, *the Bankruptcy Abuse Prevention and Consumer Protection Act* (PL 109-8) only provides that electronic disclosures should be "readily accessible in close proximity" not that they must be accessed. Disclosures placed on the same page as an application may be easily bypassed by scrolling down and simply not reading them. Many customers would consider a hyperlink friendlier.

Billing Error Resolution (226.12; 226.13)

This proposal will result in significant inconvenience for the customer and the creditor. If the customer relies on automatic debiting of a deposit account to pay amounts due on a credit card account and disputes charges that make up a portion of the balance, creditors will have to act immediately. Once a transaction dispute is received, creditors will have to recalculate the required payment amount to exclude the disputed charges and cause the next automatic debit of the customer's deposit account to include only that recalculated payment amount. If this is required, several business days would be required for that process to be completed, possibly delaying the receipt of the payment to the detriment of the customer.

The proposed rule also proposes that billing dispute requirements for consumers should also apply to commercial use of a credit card. If a customer uses a non-business card for commercial or business purposes, this constitutes a misuse of the card and should not give rise to consumer-oriented protections, such as the right to assert defective goods and services defenses against an issuer.

Dispute Resolution and 3rd Party Payment Systems (226.13)

Under the proposal, Regulation Z billing error rights would apply when a consumer uses a credit card to fund a purchase through a third-party payment intermediary. This would discourage credit card issuers from supporting use of third-party payment systems.

Card associations would not be able to limit card issuers' exposure if this proposal is adopted because they have no control over the merchants that are receiving payments through third parties. Very little, if any, infrastructure exists to enable investigation, dispute resolution, and if necessary, charge-back to that seller. Although, as the Board notes, the same issue can arise with convenience checks, issuers can choose whether to issue convenience checks and can price them differently to address this risk.

Accordingly, the proposal should specify that current dispute resolution processes under Regulation Z do not apply when there is a purchase through a third-party payment intermediary.

Effective APR Disclosures (226.7)

The Board should eliminate the effective APR disclosures mandate. This information is confusing and not helpful to consumers. Other interest rate disclosures can better educate customers on borrowing and debt service costs.

Estimate of Actual Repayment Period (Appendix M2; 226.7(b))

The Roundtable supports exempting issuers from the minimum payment disclosures mandates by *the Bankruptcy Abuse Prevention and Consumer Protection Act* (PL 109-8) if the issuer provides actual repayment periods for outstanding balances on each periodic statement. The Roundtable also supports exempting issuers from any minimum payment disclosures for customers who have not made at least three (3) minimum payments in a one year period.

In addition, all creditors should be permitted to avoid maintaining a separate phone number by permitting any creditor to rely on the number for small institutions.

Disclosures Applicable to Convenience Checks (226.9)

The rule should not require disclosures for convenience checks requested by a customer. Many card issuers receive and process requests for books of checks from consumers; these checks are generally created by third party check printers who will not be a part of the disclosure system.

The Board should not require duplicative disclosures for convenience checks. If an issuer has already made required disclosures to a customer and later provides convenience checks for that account, such issuer should not be required to provide duplicate disclosures.

Overlimit Fee Assessment (226.9)

The proposed rule provides that an overlimit fee cannot be assessed for a 45-day period from the date of a line decrease. At a minimum, this provision should not apply to credit line decreases that were requested by the consumer. Further, the 45-day limit should be 30 days to align the legal requirement with current billing practices.

Change in Terms Notice/Format

By requiring any enclosed change in terms that accompanies the periodic statement to be in tabular form, the proposed rule could be an incentive for banks to send such amendments in a separate mailer. The periodic statement is the most effective delivery vehicle for educating consumers who are more likely to read a periodic statement than a separate mail item which could be regarded as low priority for the customer.

18 Month Exemption From Minimum Payment Disclosures

The purchase of credit card accounts is often followed by a change-in-terms notice, which may include a change in the minimum monthly payment amount. If this occurs, disclosing one estimated repayment period immediately after the account purchase and then disclosing a different repayment period for the same balance after the change in terms becomes effective would be confusing to many customers. Thus, the Board should consider an exemption delaying the required repayment period disclosure for 18 months to allow the change-in-terms process to be completed before the first repayment disclosure is provided to the customer, thereby preventing needless confusion.

Conclusion

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me.

Sincerely,

Richard M. Whiting

Richard Whiting
Executive Director and General Counsel